

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT WINDELL TATE,

Petitioner,

v.

Case No. 06-CV-13156

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER'S "MOTION TO AMEND
AND SUPPLEMENT PLEADINGS" AND REQUIRING RESPONDENT TO
FILE A SUPPLEMENTAL RESPONSIVE PLEADING**

Petitioner Robert Windell Tate has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Now before the court is Petitioner's "Motion to Amend and Supplement Pleadings," (Motion to Amend) in which Petitioner asks permission to amend his habeas corpus petition to raise three additional claims.

Federal Rule of Civil Procedure 15 permits a party to amend a pleading once as a matter of course at any time before a responsive pleading is served. Petitioner filed his Motion to Amend before Respondent filed a responsive pleading. Thus, the court will grant Petitioner's Motion to Amend. Respondent has since filed an "Answer in Opposition to Petition for Writ of Habeas Corpus."¹ In that Answer, Respondent

¹Petitioner originally had two separate habeas petitions pending, one before this court (case no. 06-13156) and the other before the Honorable Patrick J. Duggan (case no. 06-13907). Petitioner's Motion to Amend and Respondent's Answer were originally filed in the petition assigned to Judge Duggan. That matter was reassigned to this court on October 2, 2007. On October 18, 2007, the court consolidated the two habeas cases and closed the later-filed case (case no. 06-13907). The court also ordered that the Motion to Amend and Respondent's Answer be re-filed in case number 06-13156.

addresses the merits of the claims added by amendment (even though the court had not yet granted the Motion to Amend). Respondent, however, fails to address the three claims raised in the original petition. Those claims were not withdrawn when Petitioner filed his Motion to Amend; instead, they were supplemented by the Motion to Amend. Therefore, the court will require Respondent to file a supplemental answer addressing the claims raised in Petitioner's original petition. Accordingly,

IT IS ORDERED that Petitioner's "Motion to Amend and Supplement Pleading" [Dkt. # 8] is GRANTED.

IT IS FURTHER ORDERED that Respondent shall file a supplemental answer addressing the claims raised in Petitioner's original petition **within thirty days** of the entry date of this Order.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 6, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 6, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522